

## **REMARKS**

Claims 1-29 were examined and reported in the Office Action. Claims 1-29 are rejected. Claims 6, 11, 20 and 26-27 are canceled. Claims 1-5, 7-10, 12, 14-19, 21-24 and 28-29 are amended. Claims 1-5, 7-10, 12-19, 21-25 and 28-29 remain.

Applicant requests reconsideration of the application in view of the following remarks.

### **I. Claim Objections**

It is asserted in the Office Action that Claims 2-4, 6-9, 14-15, 17-18 and 20-24 are objected to for informalities. Applicant has canceled claims 6 and 20. Applicant has amended claims 2-4, 7-9, 14-15, 17-18 and 21-24 as suggested in the Office Action.

Accordingly, withdrawal of the informal objections for claims 2-4, 7-9, 14-15, 17-18 and 21-24 are respectfully requested.

### **II. 35 U.S.C. § 101**

It is asserted in the Office Action that claims 26 and 27 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicant has canceled claims 26-27. Therefore, the aforementioned 35 U.S.C. §101 rejection of claims 26-27 is moot.

### **III. 35 U.S.C. § 102(b)**

It is asserted in the Office Action that claims 13-29 are rejected under 35 U.S.C. § 102(b), as being anticipated by U. S. Patent No. 7,035,259 issued to Nomura et al. ("Nomura"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131,

'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)).

The elements must be arranged as required by the claim, but this is not an *ipse dixit* test, *i.e.*, identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Nomura discloses that an L2 path that is assured of quality to the egress node depending on status changes at the ingress node is determined and accordingly the ingress node sets the L2 path on an MILS network in accordance with the label distribution protocols (see Nomura, column 6, lines 16-61 and column 8, lines 3-20). Nomura, however, does not teach, disclose or suggest: the limitations in Applicant's claim 13 having an arrangement of (see Applicant's specification, page 49, line 12 to page 52, line 17)

the admission control server comprises a route setting function unit which, in setting the optical wavelength path, registers correspondence between the upper layer packet address of the user terminal and the lower layer frame address corresponding to the optical wavelength path in the address management tables of the packet transfer apparatuses of the transmission source and destination, sets, between the packet transfer apparatuses of the transmission source and destination, an optical wavelength path formed from a cut-through optical wavelength path which has a guaranteed band and passes through only at least one wavelength switch when a band guarantee request is present, and sets an optical wavelength path which connects the packet transfer apparatuses of the transmission source and destination through said frame transfer apparatus when no band guarantee request is present,

Applicant's claim 16, 25, 28 and 29 limitations of

in setting the optical wavelength path, registers correspondence between the upper layer packet address of the user terminal and the lower layer frame address corresponding to the optical wavelength path in the address management tables of the packet transfer apparatuses of the transmission source and destination, sets, between the packet transfer apparatuses of the transmission source and destination, an optical wavelength path formed from a cut-through optical wavelength path which has a guaranteed band and passes through only at least one wavelength switch when a band guarantee request is present, and sets an optical wavelength path which connects the packet transfer apparatuses of the transmission source and destination through said frame transfer apparatus when no band guarantee request is present,

nor Applicant's claim 19 limitations of

in setting the optical wavelength path, said route setting function unit sets the optical wavelength path formed from the cut-through optical wavelength path between the packet transfer apparatuses of the transmission source and destination when a band guarantee request is present and sets an optical wavelength path which connects the packet transfer apparatuses of the transmission source and destination through a frame transfer apparatus to transfer the lower layer frame through the photonic network when no band guarantee request is present.

Therefore, since Nomura does not teach, disclose or suggest all of Applicant's amended claims 13, 16, 19, 25, 28, and 29 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(b) has not been adequately set forth relative to Nomura. Thus, Applicant's amended claims 13, 16, 19, 25, 28, and 29 are not anticipated by Nomura. Additionally, the claims that directly or indirectly depend on claims 13, 16 and 19, namely claims 14, 17-18, and 21-24, respectively, are also not anticipated by Nomura for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejections for claims 13-29 are respectfully requested.

#### **IV. 35 U.S.C. § 103(a)**

A. It is asserted in the Office Action that claims 1-12 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Nomura in view of U. S. Publication No. 2002/0131400 to Tinsley et al. ("Tinsley"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78

USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, “[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper “functional approach” to the determination of obviousness as laid down in *Graham*.” And, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” *KSR International Co. v. Teleflex, Inc.* 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007). Additionally, according to MPEP §2143

[a] statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

In Applicant’s claimed invention the inter-server information transmission/reception unit (13) of the route control server (1) is arranged that “in transmitting the inter-server information, the inter-server information transmission/reception unit confirms, based on the transfer management information (area information 15), route control servers (1C, 1D) which respectively manage areas through which packets having the destination information pass, and transmits the inter-server information only to the thus confirmed route control servers” (see Applicant’s specification, page 21, lines 1-14). Not only does Nomura not teach anything about inter-server information transfer, Tinsley, in paragraphs [0016] and [0038], does not teach, disclose or suggest that the distributed gateway routing elements include the limitations of amended claims 1, 5, 10 and 12 of “in transmitting the inter-server information, the inter-server information transmission/reception unit confirms, based on the transfer management

information, route control servers which respectively manage areas through which packets having the destination information pass, and transmits the inter-server information only to the thus confirmed route control servers.”

Even if Tinsley is combined with Nomura, the resulting invention would fail to teach or suggest all of Applicant’s amended claims 1, 5, 10 and 12 limitations, as listed above. Further, the assertions made in the Office Action on pages 17-24 that lead to a conclusion of obviousness are not explicit and the basic requirements of an articulated rationale under MPEP 2143 cannot be found. Additionally, since neither Nomura, Tinsley, and therefore, nor the combination of the two, teach, disclose or suggest all the limitations of Applicant's amended claim 1, 5, 10 and 12, as listed above, Applicant's amended claims 1, 5, 10 and 12 are not obvious over Nomura in view of Tinsley since a *prima facie* case of obviousness has not been met under MPEP §2142. Additionally, the claims that directly or indirectly depend from amended claims 1 and 5, namely claims 2-4, and 7-9, respectively, would also not be obvious over Nomura in view of Tinsley for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejections for claims 1-12 are respectfully requested.

**CONCLUSION**

In view of the foregoing, it is submitted that claims 1-5, 7-10, 12-19, 21-25 and 28-29 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

**PETITION FOR EXTENSION OF TIME**

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on August 10, 2007, Applicant respectfully petitions the Commissioner for a one (1) month extension of time, extending the period for response to December 10, 2007. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$120.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(1) large entity. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: December 6, 2007

By: 

Steven Laut, Reg. No. 47,736

1279 Oakmead Parkway  
Sunnyvale, California 94085-4040  
(310) 207-3800

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

  
Jean Svoboda

Date: December 6, 2007